IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1759 OF 2005

Shri. Sunil Arjundas Basrani ...Petitioner
Vs.
Sau. Rekhabai Lalchand Nagdeo & Ors. ...Respondents

Shri. V.V. Purwant for the Petitioner.
Shri. R.Y.Mirza, A.P.P. for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : AUGUST 24, 2005.

P.C.:

1. Heard Advocate appearing for the Petitioner. Shri. Lalchand Nagdeo, the husband of the Respondent No.1 appears in person. He states that he is representing the Respondent No.1 who is his wife. The Respondent No.1 has been duly served with the notice for final hearing of this Petition.

2. The Respondent No.1 is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. The Petition is filed by the accused challenging the order dated 18th June, 2005 passed by the learned Judicial Magistrate, First Class, Kolhapur. The challenge is to the said order which is passed under section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973) filed by the Respondent No.1. The payer in the said Application is for the recall of the complainant and other witnesses who are already examined. The order of recall is sought on the ground that Bank Memo and the original cheque on the basis on

which the complaint is filed were permitted to be produced after the evidence of the Respondent No.1 was recorded.

3. The learned Counsel for the Petitioner submitted that after the original documents were allowed to be produced, the Respondent No.1 has examined two witnesses who are the Officers of the Banks. He submitted that the Application is filed belatedly.

4. The husband of the Respondent No.1 appearing in person stated that the memo issued by the Bank returning the cheque is already exhibited in the deposition of the witness No.2. He stated that the prayer made in the Application at Exhibit 35 is confined to recall of the Respondent No.1 only for the purposes of proving the cheque.

5. It appears from the record that the original cheque was permitted to be produced after the recording of evidence of the Respondent No.1 was concluded on 28th August, 2004. In my view, there is no error if the learned Trial Judge exercised power under section 311 of the said Code of 1973 by allowing recall of the Respondent No.1 for limited purposes of proving the cheque which was filed subsequently. However, there was no reason to recall other witnesses

especially when the Bank Memo is already exhibited.

6. In view of the statement made by the Respondent No.1 appearing in person, I pass the following order:

: O R D E R :

i) The impugned order dated 18th June, 2005 passed by the learned Trial Judge is modified. The Respondent No.1 is permitted to recall herself for limited purposes of proving the documents which were allowed to be produced by the order dated 18th October, 2004.

ii) Parties to act upon an authenticated copy of this order.

JUDGE